



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 217

[Docket DARS-2015-0067]

RIN 0750-AI80

Defense Federal Acquisition Regulation Supplement: Multiyear Contract Requirements (DFARS Case 2015-D009)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2015 and a section of the Department of Defense Appropriations Act, 2015, which address various requirements for multiyear contracts.

DATES: Effective [Insert date of publication in the **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Stiller, telephone 571-372-6176.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the Federal Register at 80 FR 81499 on December 30, 2015, to amend the DFARS to implement section 816 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291) and section 8010 of the Department of Defense Appropriations Act, 2015 (Division C, Title VIII of Pub. L. 113-235), which address various requirements for multiyear contracts. There were no public comments submitted in response to the proposed rule. There are no changes from the proposed rule made in the final rule.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This rule does not add any new provisions or clauses or impact any existing provisions or clauses.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory

action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The FRFA is summarized as follows:

The purpose of this rule is to implement section 816 of the National Defense Authorization Act for Fiscal Year 2015 and section 8010 of the Department of Defense Appropriations Act, 2015, which address various requirements for multiyear contracts. The rule will amend the Defense Federal Acquisition Regulation Supplement to require the head of agency to—

- Provide written notice to the congressional defense committees at least 30 days before termination of any multiyear contract; and
- For defense acquisition programs specifically authorized by law to be carried out using multiyear authority, ensure the Secretary of Defense certifies to Congress certain conditions for the multiyear contract have been met no later than 30 days before entry into the contract.

No comments were received from the public regarding the initial regulatory flexibility analysis.

The rule is not expected to impact small entities, because the rule applies to multiyear contract authorities for specific major defense acquisition programs for which small entities would not have the capacity or infrastructure to fulfill or sustain. Small entities may perform under multiyear contracts as subcontractors; however, the rule invokes requirements that apply at the prime contract level.

This rule does not create any new reporting or recordkeeping requirements.

There are no known significant alternatives to the rule. The impact of this rule on small business is not expected to be significant because it only affects DoD internal operating procedures.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 217

Government procurement.

Jennifer Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 217 is amended as follows:

PART 217—SPECIAL CONTRACTING METHODS

1. The authority citation for 48 CFR part 217 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Revise section 217.170(b) to read as follows:

217.170 General.

* * * * *

(b) The head of the agency must provide written notice to the congressional defense committees at least 30 days before termination of any multiyear contract (section 8010 of Division C, Title VIII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and similar sections in subsequent DoD appropriations acts).

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3. Amend section 217.172-

- a. In paragraph (c), by removing "10 U.S.C. 2306b(i)(3)" and adding "10 U.S.C. 2306b(i)(1)" in its place;
- b. In paragraph (e)(1), by removing the word "and";
- c. In paragraph (e)(2), by removing the period and adding a semicolon in its place;
- d. By adding paragraphs (e)(3), (4), and (5);
- e. In paragraph (h) introductory text, by removing "under the authority described in paragraph (b) of this section:" and adding "for a defense acquisition program that has been

specifically authorized by law to be carried out using multiyear contract authority:" in its place;

f. In paragraph (h) (2) introductory text, by removing "March 1 of the year in which the Secretary requests legislative authority to enter" and adding "30 days before entry" in its place and by removing "10 U.S.C. 2306b(i) (1) (A) through (G)" and adding "10 U.S.C. 2306b(i) (3)" in its place;

g. In paragraph (h) (2) (i) -

i. By removing "FAR 17.105" and adding "FAR 17.105-1" in its places;

ii. By adding a comma after "(5)"; and

iii. By removing "10 U.S.C. 2306b(i) (1) (A)" and adding "10 U.S.C. 2306b(i) (3) (A)" in its place;

h. In paragraph (h) (2) (ii), by removing "10 U.S.C. 2306b(i) (1) (B)" and adding "10 U.S.C. 2306b(i) (3) (B)" in its place;

i. In paragraph (h) (2) (iii), by removing "10 U.S.C. 2306b(i) (1) (C)" and adding "10 U.S.C. 2306b(i) (3) (C)" in its place;

j. In paragraph (h) (2) (iv), by removing "10 U.S.C. 2306b(i) (1) (D)" and adding "10 U.S.C. 2306b(i) (3) (D)" in its place;

- k. In paragraph (h) (2) (v), by removing "10 U.S.C. 2306b(i) (1) (E)" and adding "10 U.S.C. 2306b(i) (3) (E)" in its place;
- l. In paragraph (h) (2) (vi), by removing "10 U.S.C. 2306b(i) (1) (F)" and adding "10 U.S.C. 2306b(i) (3) (F)" in its place;
- m. In paragraph (h) (2) (vii), by removing "10 U.S.C. 2306b(i) (1) (G)" and adding "10 U.S.C. 2306b(i) (3) (G)" in its place;
- n. In paragraph (h) (3), by removing "10 U.S.C. 2306b(i) (4) (A)" and adding "10 U.S.C. 2306b(i) (5) (A)" in its place;
- o. In paragraph (h) (4), by removing "10 U.S.C. 2306b(i) (4) (B)" and adding "10 U.S.C. 2306b(i) (5) (B)" in its place;
- p. In paragraph (h) (5), by removing "10 U.S.C. 2306b(i) (5)" and adding "10 U.S.C. 2306b(i) (6)" in its place;
- q. In paragraph (h) (6), by removing "10 U.S.C. 2306b(i) (6)" and adding "10 U.S.C. 2306b(i) (7)" in its place;
- r. Removing paragraph (h) (7);
- s. Redesignating paragraph (h) (8) as (h) (7); and
- t. In newly redesignated paragraph (h) (7) introductory text, adding "(10 U.S.C. 2306b(i) (4))" after "law's specific savings requirement" before the period.

The additions read as follows:

217.172 Multiyear contracts for supplies.

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(e) * * *

(3) Cancellation provisions in the contract do not include consideration of recurring manufacturing costs of the contractor associated with the production of unfunded units to be delivered under the contract;

(4) The contract provides that payments to the contractor under the contract shall not be made in advance of incurred costs on funded units; and

(5) The contract does not provide for a price adjustment based on a failure to award a follow-on contract (section 8010 of Division C, Title VIII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and similar sections in subsequent DoD appropriations acts).

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